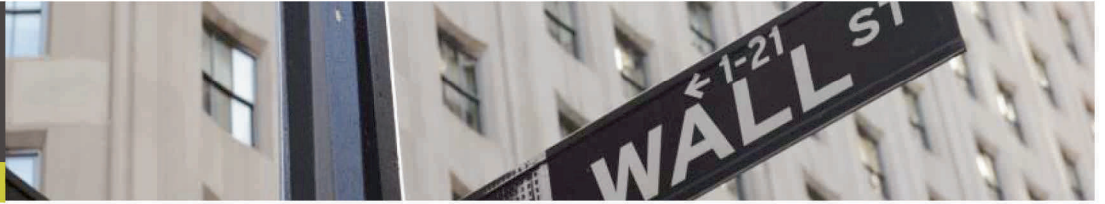


**Labaton
Sucharow**



Ethics & Action Survey

December 2011

EXECUTIVE SUMMARY

On July 21, 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, one of the most significant financial reform efforts since the Great Depression. This landmark legislation set out to reshape the US regulatory landscape, reduce systemic risk, and help restore confidence in the financial system. One of the most important investor protection provisions in Dodd-Frank directed the Securities and Exchange Commission to establish a whistleblower program that requires the agency to pay monetary awards to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to a successful enforcement action or a related action. Dodd Frank also prohibits retaliation by employers against individuals who provide the SEC with information about possible securities violations.

As an outgrowth of Labaton Sucharow's longstanding commitment to marry advocacy and corporate reform, in July 2011, we established the nation's first whistleblower practice exclusively focused on protecting and advocating for SEC whistleblowers. This practice was launched and is headed by Jordan A. Thomas, a former Assistant Director and Assistant Chief Litigation Counsel in the Division of Enforcement at the SEC. During his tenure, Mr. Thomas successfully investigated, litigated, and supervised a wide variety of high-profile enforcement matters that resulted in monetary relief for harmed investors in excess of \$35 billion. Significantly, he also had a leadership role in the development of the SEC's whistleblower program, including drafting the proposed legislation and implementing rules.

In November 2011, the SEC announced record enforcement results and impressive early numbers for the agency's whistleblower program. The annual report for the whistleblower program revealed that the SEC had received numerous high-quality whistleblower submissions, originating from virtually every state in the union and numerous countries around the world. Now, due to the significant protections and incentives available, whistleblowers from all walks of life are breaking their silence. They are providing law enforcement authorities with early and invaluable assistance in identifying the scope, participants, victims, and ill-gotten gains associated with fraudulent schemes.

A whistleblower practice is unlike any other area of legal concentration. It is deeply personal, rooted in a commitment to protect and advocate for the courageous individuals who opt to do the right thing, often at great personal and professional risk. For this reason, we felt it was important to take the pulse of our country and commission this inaugural *Ethics & Action Survey*. In many ways, the findings are bittersweet. While Americans are all too familiar with daily news stories reporting corporate crime, many of those schemes seem to occur in the abstract, architected in the highest, closed-door echelons of financial institutions and mega-conglomerates. So it was disheartening to learn that more than one-third of Americans have witnessed or had firsthand knowledge of workplace misconduct. Tempering the blow was the discovery that the lion's share of respondents would report – and would encourage a loved one to report – wrongdoing if the report could be made anonymously, with protections and incentives. That willingness was exactly what Congress sought to channel in establishing the SEC whistleblower program. But do Americans know that such vehicles exist? Our findings point to a resounding no, with 68% of Americans surveyed reporting that they are unaware of the new whistleblower program.

Now, our work begins. The genius of Dodd-Frank is that it recognized that law enforcement authorities cannot effectively and efficiently police the marketplace without the assistance of private individuals and entities. We are energized by individuals who come forward to report wrongdoing, to take a stand, to speak out. We hope, too, that responsible corporations work to establish a culture of integrity in their organizations. The era of corporate scandal must end and together we can protect investors and restore public faith in our markets.

KEY FINDINGS

A significant number of Americans have observed or had firsthand knowledge of wrongdoing in the workplace.

- More than one-third of Americans surveyed (34%) reported that they have observed or had firsthand knowledge of misconduct in the workplace.
- Where respondents reside had a notable impact on their observation of wrongdoing at work. For instance, 29% of Americans living in the Northeast have observed or have direct knowledge of misconduct in their workplace, whereas that number increases to 37% for those living in the Western US. Along similar lines, 41% of respondents living in non-metro areas, compared to 32% in metro areas, had knowledge of misconduct at work.
- Concerning income, 49% of respondents with annual household income¹ between \$75,000-\$100,000 reported that had observed, or had knowledge of, misconduct at work. Interestingly, this percentage dropped to 29% for those respondents with a household income above \$100,000.
- 37% of White/Caucasian respondents said they have observed or had knowledge of wrongdoing in the workplace, while that figure dropped to 33% for Black/African-American respondents and 22% of Hispanic respondents.
- Respondents' level of education also factored into their knowledge of workplace wrongdoing. While 29% of high school graduates had knowledge of wrongdoing, that figure jumped to 42% for those Americans who had some level of college education.

The vast majority of Americans would report wrongdoing in the workplace if it could be done anonymously, without retaliation, and result in a monetary award.

- 78% of respondents would report wrongdoing in the workplace if it could be done anonymously, without retaliation, and result in a monetary award. There was not a significant difference in willingness to report based purely on respondents' gender.
- Interestingly, age was a factor for respondents. 83% of those surveyed between the ages of 45-54 would report misconduct given the three protections set forth above. However, only 74% of respondents at an earlier point in their career, aged 18-34, would report even with the anonymity and anti-retaliation protections and financial incentives.
- With regard to income, 88% of respondents with an annual household income over \$75,000 would report wrongdoing, compared to 78% of those with a household income between \$50,000-\$75,000.
- The willingness to report misconduct with the protections outlined above increased steadily based on level of education. For instance, respondents who have not completed high school were 12% less likely to report misconduct than those who had graduated college.

¹ Figures derived from 2010 Gross Income

Survey respondents are inclined to encourage a spouse or a loved one to report wrongdoing in the workplace if the report can be done anonymously and if the spouse or loved one would be protected from retaliation and receive a monetary award.

- 79% of respondents would encourage a loved one to report misconduct with the protections set forth above – a slight increase in percentage from a willingness to report themselves.
- Women were more inclined to encourage a loved one to be a whistleblower (82%), compared to 75% of men.
- There was little disparity between age and residential region indicated in respondents' willingness to encourage a loved one to blow the whistle.
- The inclination to encourage a spouse or loved one to be a whistleblower is not consistent across racial groups. 82% of white respondents would encourage such behavior, as compared to 76% of Hispanic respondents and 72% of Black respondents.

A significant percentage of Americans are unaware that the Securities and Exchange Commission (SEC) has introduced a new Whistleblower Program designed to protect and reward individuals who report violations of the federal securities laws. Among other provisions, this program allows individuals to report possible violations of the federal securities laws anonymously, with anti-retaliation protections, and monetary awards.

- 68% of Americans surveyed are unaware of the new SEC Whistleblower Program. There was an eight point spread between men and women with respect to knowledge of the SEC's whistleblower program, 64% and 72% respectively.
- There were notable disparities across regions, with 66% of Americans in the South versus 71% of respondents living in the Midwest, unfamiliar with the program. A similar spread was detected among urban and non-urban Americans, with 67% of metropolitan residents compared to 72% of non-metropolitan residents, unfamiliar with the SEC program.
- Concerning income, higher wage earners reported more familiarity with the SEC whistleblower program. 43% of respondents with an annual household income over \$100,000 are aware of the new SEC whistleblower program, while the figure drops to 26% for respondents with a household income below \$35,000.
- There are vast differences among races when it comes to awareness of the SEC Whistleblower Program. 35% of White respondents are aware of the program as compared to 26% of Black and 22% of Hispanic Americans.
- There is a strong corollary between age and awareness of the SEC program. 81% of respondents between the ages of 18-34 were unfamiliar with the program, a percentage that fell to 60% for individuals between the ages of 55-64.

Methodology

ORC international conducted the Labaton Sucharow Ethics & Action Survey. The random digit dialing telephone survey of 1,007 adults consisted of 503 men and 504 women, 18 years of age and older, living in private households in the continental United States. The sample was fully replicated and stratified by region. Only one interview was conducted per household. All sample numbers selected were subject to up to four attempts to complete an interview.